



1100 15<sup>th</sup> Street NW, Washington, DC 20005  
+1 202 919 4940  
info@aima.org

[aima.org](http://aima.org)

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Submitted via email to: rule-comments@sec.gov

October 20, 2023

Dear Ms. Countryman:

**Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities (File No. S7-23-22)**

The Alternative Investment Management Association (AIMA)<sup>1</sup> appreciates the opportunity to submit this supplemental response on the U.S. Securities and Exchange Commission's (SEC or Commission) proposed rule to amend the standards applicable to covered clearing agencies for U.S. Treasury securities ("CCAs")<sup>2</sup> to require CCAs to establish written policies and procedures reasonably designed to require that every CCA direct participant submit for clearance and settlement all "eligible secondary market transactions" ("ESMTs") in U.S. Treasury securities to which it is a counterparty (the

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<sup>1</sup> AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with around 2,100 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2.5 trillion in hedge fund and private credit assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programs and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 250 members that manage \$800 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialized educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, [www.aima.org](http://www.aima.org).

<sup>2</sup> The Fixed Income Clearing Corporation ("FICC") is currently the only registered CCA that provides central counterparty (CCP) services for U.S. Treasury securities transactions. In this letter, we use FICC and CCA interchangeably.

The Alternative Investment Management Association Ltd (Washington, D.C. Branch)

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“Proposal”).<sup>3</sup> AIMA’s members include institutional investment managers, most of whom are active indirect participants (i.e., customers<sup>4</sup>) in the cash Treasury and repo markets and will therefore be impacted by the Proposal.

As we explained in our initial response,<sup>5</sup> AIMA supports central clearing because, when calibrated appropriately, it increases resiliency, liquidity and transparency in financial markets. Although we broadly support the Proposal and several of the changes contemplated therein, we reiterate our disagreement with the Commission’s approach to install a clearing mandate before resolving issues with the current clearing framework and to target specific market participants with more onerous requirements by selectively applying a clearing mandate. Specifically, prior to establishing a clearing mandate, the Commission should – and has the statutory authority to<sup>6</sup> – require FICC to amend its policies and procedures to address “done away” trades and other issues before implementing a clearing mandate for cash Treasury and repo transactions. In addition, in no event should hedge funds be singled out for a selective application of a clearing mandate.

Unless these issues are resolved, the expansion of central clearing, as contemplated in the Proposal, will be accompanied by outsized costs for indirect participants as they are forced to arrange numerous, expensive clearing relationships with direct participants. We reiterate our concerns that, if market participants are required to clear ESMTs without efficient means of accessing clearing, they will be forced to curtail their cash Treasury and repo trading, which will needlessly harm Treasury market liquidity and the central role that Treasuries play as investment and hedging instruments. Moving forward without ensuring appropriate access for indirect clearing would also undermine both the Commission’s objectives and the market’s ability to realize the benefits associated with central clearing.

We write separately today to ensure that any final rule excludes from its scope certain limited transactions where a clearing requirement is neither necessary nor appropriate. Specifically, the Commission should exempt the following transactions from the scope of the clearing mandate, all of which would be operationally impracticable, costly or burdensome to clear.

### **1. Transactions entered into outside of a CCA’s operating hours**

Market participants may enter into a cash Treasury or repo transactions after the close of a CCA’s operating/business hours. Accordingly, the CCA may not be able to accept the transaction for clearing and novation as contemplated by the Proposal. The Commission should therefore exempt these

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<sup>3</sup> SEC, Proposed Rule, “Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities”, 87 Fed. Reg. 64610 (Oct. 25, 2022) (the “Proposed Rule”).

<sup>4</sup> We use the terms indirect participant and customer or client interchangeably in this response.

<sup>5</sup> Letter from Jiří Król, Deputy CEO, Global Head of Government Affairs, AIMA, to Vanessa Countryman, Secretary, SEC (Dec. 22, 2022), available at: <https://www.sec.gov/comments/s7-23-22/s72322-20153388-320795.pdf>.

<sup>6</sup> *Id.* at 6 (explaining why the Commission has the authority under its regulations to require FICC (and any future CCAs) to make the necessary changes to its policies and procedures to address the anticompetitive and unequal access practices regarding “done away” trades).

transactions from a final rule, unless and until FICC can change its operating hours to account for these transactions or another CCA becomes available with 24/7 clearing capabilities.

## **2. Inter-affiliate transactions**

The Proposal appears to require ESMTs between affiliates to be cleared; this requirement would create new, unnecessary costs without any benefits. For example, if an inter-affiliate transaction is part of an internal arrangement where the related external transaction between the non-affiliated counterparty is already cleared, then the benefits of central clearing have already been realized. It would therefore then be unnecessary, costly and impractical to require the inter-affiliate transaction to be separately cleared. The Commission should exempt inter-affiliate transactions from the scope of any clearing mandate, as it has commonly done when implementing other regulatory requirements<sup>7</sup> and for the same reasons the Commodity Futures Trading Commission excluded inter-affiliate swaps from its swap clearing mandate.<sup>8</sup>

## **3. Transactions (in this case, repos and reverse repos) involving purchased securities that include both Treasury CUSIPs and securities with other CUSIPs or where permitted substitution may be in CUSIPs other than Treasury CUSIPs**

There are occasions when a tri-party repo transaction may include CUSIPs that are Treasuries that would be required to be cleared under the Proposal. However, these Treasury securities may often only represent a small component of the transaction, yet the Proposal would require them to be cleared when the transaction is entered into. We would encourage the Commission to exempt these transactions from the scope of any clearing mandate.

## **4. Transactions entered into with a commercial end-user**

Commercial entities that enter into cash Treasury or repo transactions do so for various, legitimate purposes; however, these entities' Treasury trading is rarely large in size, and the costs of these transactions being cleared would ultimately outweigh the benefits. Furthermore, exempting these commercial entities' Treasury trading would be consistent with the exemption provided to them in the Commission's uncleared swap margin rules.<sup>9</sup>

## **5. Transactions with counterparties that lack access to a CCA's clearing service**

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<sup>7</sup> See e.g., SEC, "Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants", 81 Fed. Reg. 29660, 29920 (May 13, 2016).

<sup>8</sup> 17 CFR 50.52; See also SEC, "Clearing Exemption for Swaps Between Certain Affiliated Entities", 78 Fed. Reg. 21750, 21853 (Apr. 11, 2013) (noting that in the case of swaps that inter-affiliate transactions offer "risk-mitigating, hedging, and netting benefits" and that "entities within an affiliated group are incentivized to fulfill their inter-affiliate swap obligations, to support each other to prevent outward facing failures, and to resolve any disagreements about the terms of inter-affiliate swaps more quickly and amicably").

<sup>9</sup> 17 CFR 240.18a-3.



Not all market participants that transact in ESMTs have access to a CCA's (in this case, FICC) clearing service, whether it is because of the CCA's existing rules or otherwise. As noted above, market access issues must be addressed prior to the implementation of a clearing mandate; otherwise, any final rule should provide an exclusion from the clearing mandate for market participants that engage in cash Treasury or repo transactions but are unable to access FICC.

Finally, we urge the Commission to adopt a reasonable implementation timetable in any final rule, noting that commenters have not had an opportunity to comment on this topic since the Proposal did not provide a suggested implementation schedule. This could include staggering compliance dates such that repo transactions are prioritized.

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We would be happy to elaborate further on any of the points raised in this letter. For further information, please contact Daniel Austin, Director, U.S. Policy and Regulation, by email at [daustin@aima.org](mailto:daustin@aima.org).

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned below the "Yours sincerely," text.

Jiří Król  
Deputy CEO, Global Head of Government Affairs  
AIMA

Cc: The Honorable Gary Gensler, Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
The Honorable Mark T. Uyeda, Commissioner  
The Honorable Jaime Lizárraga, Commissioner  
Dr. Haoxiang Zhu, Director, Division of Trading and Markets